

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

NORSE BUILDING SYSTEMS, INC.

Employer

and

MIDWESTERN COUNCIL OF INDUSTRIAL
WORKERS

Petitioner

Case 18-RC-17254

DECISION AND DIRECTION OF ELECTION

Petitioner seeks an election in a unit of production and maintenance employees and truck drivers employed by the Employer at its Ladysmith, Wisconsin manufacturing plant. The Employer and Petitioner agree that the unit should include quality control employees and employees employed to install the Employer's product away from the Employer's facility. The parties further agree that crew chiefs should be included in the unit. According to Petitioner, the unit consists of 66-74 employees.

Contrary to the Petitioner, the Employer seeks to include in the unit 11 office employees. According to the Employer, with the office employees, the unit would consist of 78 or 79 employees.

After reviewing the record¹, I conclude that the unit sought by Petitioner is appropriate for collective bargaining. I further conclude that the office employees should be excluded from the unit.

¹ The Employer and Petitioner submitted post-hearing briefs advocating their respective positions. However, Petitioner filed its brief by facsimile, which is not permitted under the Board's Rules and Regulations. Therefore, in reaching my conclusion I have not considered Petitioner's brief. I have retained the brief in the case file.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.²
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The first section of this decision will describe the Employer's operation. Next I will describe the jobs of the 11 employees in dispute. The third section will summarize the record concerning the working conditions that production employees share with the office employees, as well as the working conditions that differ between the two groups. The fourth section will describe the degree of interchange between production employees and office employees. Finally, in the conclusion, I will explain my reasons for excluding the office employees from the unit sought by Petitioner.

² The Employer, Norse Building Systems, Inc., is a Minnesota corporation engaged in the manufacture and wholesale sale of modular homes at its Ladysmith, Wisconsin facility. During the past calendar year, a representative period, the Employer received at its Ladysmith, Wisconsin facility goods valued in excess of \$50,000 directly from suppliers located outside the State of Wisconsin. During the same time period, the Employer sold and shipped goods and materials valued in excess of \$50,000 from its Ladysmith, Wisconsin facility directly to points located outside the State of Wisconsin.

The Employer's Operation

The Employer manufactures modular homes. Unlike most manufacturers of modular homes, the Employer's business is the manufacture of custom homes. That is, builders bring in plans for homes, and the Employer figures out how to build the planned homes in sections on the production floor. The Employer ships the sections to construction sites and, using cranes, sets the sections on foundations. The foundation work, as well as all construction work necessary after placement of the sections on the foundation, is completed by the builder or its subcontractors. The time needed to manufacture a home from start to finish (including planning) is six weeks. The production cycle is eight days. The Employer has about 20 work stations, and at any time production employees are working on more than one home. The Employer has also manufactured multi-family units.

The Employer's production process begins with its sales staff, who assist builders in working with home owners on the plans. Then orders are processed in the office, including drafting and estimating work. Once an order is completed in the office, it is sent to purchasing for the ordering of supplies. The order is then sent to the engineering group, which creates the final plans. After the sales coordinators confirm the details, the order goes to the production floor. When production of the home is complete, the sections are loaded onto trucks driven by employees of the Employer. The drivers deliver the sections to the construction site, and employees of the Employer place the sections on the foundation. At that point the Employer's responsibility ends.

The Employer employs eleven employees and six supervisors/managers in the office area. The six supervisors/managers are Cynthia Martin (controller), Sherry Marynik (sales manager), Amanda Peterson (drafting supervisor), Kent Kavanagh (vice president operations), Phil Swanson (vice president sales) and K. Peter Stalland (president). The Employer and

Petitioner agree that they would be excluded from any unit. The eleven employees in the office include two drafting employees (who report to Peterson); a “Knute” assistant (she assists Stalland with on site construction); one transportation coordinator, one service/warranty employee, and one purchasing/inventory employee (all three report to Kavanagh); one administrative assistant, one estimator, one accountant, and one accounts payable employee (all reporting to Martin); and one sales coordinator (reporting to Swanson). None of these office employees report directly or indirectly to the production manager, who is responsible for the production area.

The production manager is Rick McDuffy, who reports to Vice President of Operations Kavanagh. The production area is divided into three groups – each with its own supervisor. The three groups are framing, center of line (plumbing, electrical and drywall), and final finish. In addition to the three groups are quality control employees, who report directly to Kavanagh.

The record is clear that the production manager hires employees for the production area, and that the supervisors/managers located in the office hire the 11 office employees. The record does not explain who is involved in decisions to discharge or discipline either the office or production employees.

The Office Employees Jobs

The record reveals some information regarding the positions in dispute. One of the positions is in sales. The sales staff locates builders to become customers, and helps those builders work with home owners to secure orders. In addition, the sales coordinator (the sales position in dispute) assists in determining finishes (such as colors, cabinets, trim work) for the homes being built. The two drafting employees are then involved in developing initial plans once a home is ordered. The drafting employees have technical degrees in the field, and the Employer prefers that applicants for the drafting job have keyboard experience. The estimator is

involved in costing out projects. Presumably the job of the purchasing/inventory employee is to purchase supplies and make sure that adequate inventory is maintained. The transportation coordinator schedules shipping of the Employer's product, makes sure the product is loaded correctly, ensures that necessary permits are pulled, and is responsible for timely delivery. The service/warranty coordinator develops warranties, evaluates the quality of every house produced, and attempts to determine what happened and how to fix problems that develop in the Employer's product. The "Knute" assistant deals with the office staff to coordinate construction for one specific builder – Knute Construction located in the Minneapolis-St. Paul, Minnesota area. While their jobs are not described in any detail, both the accountant and accounts payable employee must be good with numbers and detail oriented. Finally, it appears that the administrative assistant performs office clerical functions.

Comparison of Working Conditions

The Employer elicited testimony that office employees and production employees have the following in common: direct deposit of paychecks, payday, withholding of taxes, reimbursement for travel expenses, cost of living increases (if given), 401(k) plan, health insurance, leaves of absence policies, jury duty pay, overtime policies, holidays, sick and military leaves, casual dress and social activities, probationary periods, hiring and discharge procedures, and evaluation system. Production and office employees also share the same vacation benefit. However, office employees are not required to take vacation during the two annual plant shutdowns – while production employees are so required. Production and office employees also participate in the same bonus program – although it appears that the percentage share differs for office employees when compared to production employees. The Employer also contends that office and production employees wear the same casual-style clothes.

It is also clear that some working conditions differ when comparing the two groups of employees. Office employees park in front of the Employer's facility and enter by the front door, while production employees park on the side of the building and use a different entrance. Office employees have work stations that include desks; production employees do not have desks. Office employees have a separate break area when compared to production employees, although the Employer contends that employees in both groups are free to use any break area. Office employees do not punch a time clock, while production employees do punch a time clock. However, office employees fill out time sheets, and employees out on installation crews also fill out time sheets. Production employees are required to provide their own hand tools, and the Employer provides production employees with power tools. At most, the only tool used by office employees is a tape measure. When in the production area, different groups of individuals are delineated by different color hard hats. Production employees wear blue hard hats, supervisors and office employees wear white hard hats, quality control employees wear red hard hats, and visitors wear green hard hats.

Finally, while not provided in detail, it appears that the wage rates of office employees are in the same range as the wage rates of production employees, except that production employees start at a significantly lower wage rate (\$6.00/hour) than the ranges described for office employees.

Interchange

The Employer emphasizes that production and office employees are part of the same team. That is, the production line depends on the engineering department to get drafting issues resolved, the production line depends on the sales coordinating staff to determine what finishes will be used, and production supervisors and quality control employees are in the office working

with the office employees to resolve questions and warranty issues. One Employer witness estimated that office employees deal with production issues 50% of their time.

On the other hand, production employees never perform the work performed by office employees. The only exception would be if a production employee were on light duty due to an injury, in which event the employee might work in the office two to four weeks performing clerical functions. Moreover, the record does not suggest that any office employees substitute for production employees. In fact, office employees employed in drafting and accounts payable, and as the “Knut” assistant, estimator, accountant, and administrative assistant never perform work in the production area. The office employees employed in purchasing/inventory and service warranty will help load and/or unload trucks when necessary, but the record is silent on the frequency that they do so. In addition, the transportation coordinator has filled in as a truck driver, but again the record is silent on the frequency that he has done so. The sales coordinator appears to be the only office employee regularly in the production area, as part of her responsibility is work with builders on light fixtures, cabinets, trims, and other finishing materials.

According to the Employer, three current office employees transferred from the production area to office jobs in the last three to four years. The trucking coordinator was once a truck driver, a drafting department employee was once in the framing department, and the purchasing/inventory employee was once in the receiving department. The Employer is also currently working with another framing employee interested in a drafting position. In addition, at some time in the past an estimator transferred from that position to a production job.

Conclusion

The Board’s long-standing practice is to exclude office clerical employees from production and maintenance units. Hygeia Coca-Cola Bottling, 192 NLRB 1127, 1129 (1971);

Westinghouse Electric Corporation, 118 NLRB 1043, 1047 (1957). The record in this case provides little reason to deviate from that practice. The record is clear that the 11 employees in dispute work in the general office area, separated from the plant area. It also appears that the employees in dispute perform typical office or technical functions. That is, they do not work with hand or power tools, and their work is only indirectly related to the production process.

Mosler Safe Company, 188 NLRB 650 (1971). Moreover, the fact that some of these 11 employees have daily contact with production employees does not require inclusion.

Mitchellace, Inc., 314 NLRB 536 (1994). The record is also clear that these eleven employees are separately supervised from the production employees, and do not report to the production manager either directly or indirectly. Also important is the lack of interchange – that is the 11 office employees do not fill in on production jobs and the production employees do not temporarily perform the jobs of the 11 office employees. Not only is there not interchange, but the majority of these 11 employees never assist or work alongside production employees.

Cook Composites & Polymers Co., 313 NLRB 1105, 1109 (1994). While the record reveals that three of the employees in dispute assist in loading, unloading or driving trucks, the record is also clear that they do so only when necessary – and not as part of their regular duties. Finally, while the Employer contends that the sales coordinator is routinely in the production area in order to determine finishes, it appears that in doing so she is working with builders. The record does not suggest that production employees assist in the selection of colors, cabinets and other finishes.

I recognize that these 11 employees share common benefits and some (but not all) working conditions with production and maintenance employees, but the Board has made clear that the most important factor is the nature of the duties performed. Hygeia Coca-Cola Bottling, supra. Finally, I note that the Employer has not contended that any of the 11 are plant clerical

employees. Rather, its position is that I should depart from long-standing precedent and include office employees in a production and maintenance unit.

6. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part-time production and maintenance employees and truck drivers, including quality control employees and crew chiefs, employed by the Employer at its Ladysmith, Wisconsin facility; excluding all office employees, guards and supervisors as defined in the National Labor Relations Act, as amended.

DIRECTION OF ELECTION³

An election by secret ballot will be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not

³ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **May 13, 2004**.

been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.⁴

Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Midwestern Council of Industrial Workers**.

Signed at Minneapolis, Minnesota, this 29th day of April 2004.

/s/ [Ronald M. Sharp]

Ronald M. Sharp, Regional Director
Eighteenth Region
National Labor Relations Board
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To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. In order to be timely filed, this list must be received in the Minneapolis Regional Office, Suite 790, 330 Second Avenue South, Minneapolis, MN 55401-2221, on or before close of business **May 6, 2004**. No extension of time to file this list may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.